**L. M. Berry and Company *and* United Food and Commercial Workers International Union, Local 1636, AFL-CIO.**[1] Cases 12-CA-8443 and 12-CA-8480

January 25, 1983

## DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS ZIMMERMAN AND HUNTER

On July 7, 1980, Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

In *L. M. Berry and Company*[2] the Board found that the Respondent had violated Section 8(a)(5) and (1) since October 4, 1979, by refusing to bargain with the Union, which had been certified as the collective-bargaining representative of the employees in the same unit described in the 8(a)(5) allegations of the instant complaint. Here, the General Counsel is alleging an 8(a)(5) violation and is seeking a *Gissel*[3] bargaining order—dating from the inception of the Respondent's unlawful conduct—as a remedy for the unfair labor practices committed after the Union had attained majority status and had demanded bargaining.

The Administrative Law Judge dismissed the 8(a)(5) allegation, finding in substance that since the Board had issued a bargaining order in *Berry I* the refusal-to-bargain issue here is moot. The General Counsel excepts, contending that a bargaining order is warranted here to ensure employees a complete remedy for the Respondent's unfair labor practices.

We adopt the Administrative Law Judge's findings that the Respondent violated Section 8(a)(1) of the Act in several instances in this case. In further agreement with the Administrative Law Judge, we find no merit in the General Counsel's contention that these violations warrant a further finding that the Respondent also violated Section 8(a)(5), or the issuance of a *Gissel* bargaining order. We do not, however, adopt the rationale of the Administrative Law Judge that the refusal-to-bargain issue is moot because of our issuance of a bargaining order in *Berry I*. The finding of such a violation here would extend back to the date from which the Respondent was obliged to bargain. Rather, it is our opinion that the unfair labor practices found here are not of sufficient magnitude as to impede a fair election following the application of the Board's traditional remedies.

While we do not consider the violations Respondent committed to be trivial, they are of neither a nature or number indicating "the tendency to undermine majority strength and impede the election process."[4] In particular, the Respondent did nothing to threaten the employment status or working conditions of employees who supported the Union, or threaten any action in retaliation for a union victory. We therefore adopt the Administrative Law Judge's dismissal of the 8(a)(5) allegation of the complaint.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, L. M. Berry and Company, Tampa, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

## DECISION

### STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon an original charge filed by the above-named Union in Case 12-CA-8443, a complaint was issued on February 13, 1979, alleging, *inter alia*, that L. M. Berry and Company (herein called Respondent) had engaged in certain conduct which violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act). Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged in the complaint. On January 30, 1979, the Union filed the charge in Case 12-CA-8480, and on February 27, 1979, the Regional Director for Region 12 issued an order consolidating cases, amendment to complaint, and amended notice of hearing, thereby consolidating Cases 12-CA-8443 and 12-CA-8480 for hearing. The com-

[1] The name of the Union, formerly Retail Clerks International Union, Local 1636, AFL-CIO, is amended to reflect the change resulting from the merging of Retail Clerks International Association and Amalgamated Meatcutters and Butcher Workmen of North America on June 7, 1979. See *L. M. Berry and Company*, 248 NLRB 1218 (1980).

[2] 248 NLRB 1218. Hereinafter *Berry I*.

[3] *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

[4] *Gissel, supra* at 614.

plaint amendment alleged that Respondent had refused since September 22, 1978, to recognize and bargain with the Union concerning the wages, hours, and other conditions of employment of employees in an appropriate bargaining unit in violation of Section 8(a)(1) and (5) of the Act. Respondent filed timely answer denying that it had violated the Act as alleged. On June 8, 1979, Respondent filed an amendment to answers in which it pleaded certain affirmative defenses to the refusal-to-bargain allegations contained in the February 27, 1979, amendments to complaint.

On June 11, 1979, Respondent filed a motion for partial dismissal or to continue hearing. Summarized, the motion averred a Board-supervised election had been conducted among the unit employees involved herein on December 8, 1978, in Case 12-RC-5557; that the Union won the election; that Respondent had filed objections to the election; that the General Counsel had indicated he sought a *Gissel* remedy in the instant cases; and that issuance of a bargaining order in the instant case would be improper as a matter of law. The General Counsel filed opposition to Respondent's motion for partial dismissal and indicated at the outset of the hearing, which commenced on June 18, 1979, that his request for a bargaining order was based, in part, upon post-election conduct which would preclude the holding of a fair election in the event the Employer's objections to the election were sustained. Respondent's motion for partial dismissal or continuance was denied at the commencement of the hearing.

The matter was heard at Tampa, Florida, on June 18, 19, and 20 and August 30, 1979. All parties were afforded full opportunity to participate and each filed a brief following the close of the hearing.

I judicially notice the fact that the Union was certified as the exclusive collective-bargaining agent of Respondent's employees in the bargaining unit described in the complaint on September 18, 1979, when certification of representative was issued in Case 12-RC-5557, and I further judicially notice that a complaint was thereafter issued in Case 12-CA-8853 alleging that Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to honor the certification.

On November 14, 1979, Respondent moved that I strike certain portions of the brief filed by the General Counsel herein. Thereafter, by motion dated December 14, 1979, Respondent moved that I dismiss the complaint issued in Case 12-CA-8853, or, in the alternative, consolidate Case 12-CA-8853 with Cases 12-CA-8443 and 12-CA-8480, as they all involved the same parties and the issues were intertwined. The General Counsel filed opposition to Respondent's motions and moved that the record herein be reopened to permit him to introduce in evidence: (1) the September 18, 1979, certification of representative in Case 12-RC-557; (2) a letter from the Union to Respondent dated subsequent to the above-mentioned certification of representative; (3) Respondent's reply to the letter referred to in item (2); and (4) the complaint and notice of hearing issued in Case 12-CA-8853 on November 23, 1979. On January 18, 1980, I issued a ruling on motions denying Respondent's request that Case 12-CA-8853 be consolidated with the instant cases; denying Respondent's motion to dismiss Case 12-CA-8853; denying the General Counsel's motion to reopen the record; and granting Respondent's motion to strike those portions of the General Counsel's brief which referred to post-trial events other than issuance of certification of representative in Case 12-RC-5557.

On April 17, 1980, the Board issued its Decision and Order in *L. M. Berry and Company*, 248 NLRB 1218 (1980), in which it granted the General Counsel's Motion for Summary Judgment in Case 12-CA-8853. In sum, the Board found that Respondent had violated Section 8(a)(1) and (5) of the Act since October 4, 1979, by refusing to bargain collectively with the Union as the exclusive bargaining representative of the employees in the unit described in paragraph 15 of the complaint in this case.

In my view, the Board's Decision and Order in *L. M. Berry and Company, supra*, produces a situation wherein the refusal-to-bargain issues in the instant case are moot. Accordingly, I will not make factual findings regarding the refusal-to-bargain allegations contained in the instant complaint in this Decision, and I recommend that such allegations be dismissed.

## I. JURISDICTION

It is undisputed, and I find, that Respondent, L. M. Berry and Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Retail Clerks International Union, Local 1636, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.[1]

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *Background*

Respondent, which is headquartered in Dayton, Ohio, is engaged in the business of selling telephone directory advertising in several States. Its Tampa, Florida, facility is the only operation involved in this case.

The record reveals that Respondent utilizes two types of salesmen to sell ads which appear in the yellow pages of telephone directories; i.e., premise salesmen, who physically visit the premises of prospective customers, and telephone sales representatives, who sell ads by contacting prospective customers by telephone.

During 1978, Respondent employed some 12 telephone sales representatives, most of whom were females, in its Tampa office. Prior to April 1978, the telephone sales representatives were paid largely on a commission basis but they received a small salary. In April, Respondent instituted at the Tampa facility a different pay plan which had previously been placed in effect at most of its other sales locations. The new pay plan increased the weekly salary of telephone sales representatives, adjusted

[1] The name of the Union has since been changed to United Food and Commercial Workers International Union, Local 1636, AFL-CIO. See *L. M. Berry and Company, supra.*

the commissions paid on sales, and changed the remuneration arrangement on repeat sales.[2]

From December 15, 1975, until November 2, 1978, Martha Ann Romines was the immediate supervisor of the 12 telephone sales representatives who were employed by Respondent at its Tampa facility. As revealed by the record, most of the 12 telephone sales representatives voiced repeated complaints about the newly instituted pay system subsequent to April 1978. On May 1, 1978, Romines held a meeting with her subordinates and then requested that they each prepare and submit to her their written observations or criticisms of the new pay system. After complying with Romines' request, the telephone sales representatives continued during the period April–September 1978 to voice oral objections regarding the new pay system to Romines. As will be discussed hereinafter, Romines indicated to the telephone sales employees on September 20, 1978, that she had heard enough complaints about the new pay system and did not want to hear any more. According to the employees who testified at the hearing, Romines' September 20 statements led them to seek representation through the Union.

### B. *The Organization Campaign*

On September 21, all 12 of the telephone sales representatives attended a union meeting at the Hawaiian Village Motel in Tampa. Eleven signed union authorization cards and additionally signed a petition which indicated they desired to be represented by the Union.[3] Subsequently, on September 22, union representatives Ellis and Price took the cards to Respondent's Tampa office and there requested that William Bray, Respondent's division manager, recognize and bargain with the Union as the representative of its telephone sales representatives. Bray informed the union representatives he would inform the Dayton office of their request, indicating he did not have authority to act in the matter. Having failed to obtain voluntary recognition, the Union filed a petition for an election in Case 12–RC–5557 shortly after its representatives had visited the Tampa facility.

### C. *The Alleged 8(a)(1) and (3) Violations*

The General Counsel's complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act in numerous respects during the period extending from September 18, 1978, to early 1979. Unlawful conduct is attributed to "Buddy" Smith, vice president; William H. Tripp, assistant vice president of personnel; William R. Green, southeastern territory manager; Harriet Burgess, supervisory trainer and temporary sales supervisor; Martha Ann Romines, sales supervisor; and Tom Sturtz, Florida division manager. It is uncontested, and I find, that each of the named individuals was an agent of Respondent and was a supervisor within the meaning of Section 2(11) of the Act when they engaged in the conduct described in the complaint.[4] The specific complaint allegations are summarized and discussed below:

#### 1. Romines' September 20 meeting

Paragraph 5 of the complaint alleges that Respondent violated Section 8(a)(1) through the actions of Romines on September 20, 1978, as she then allegedly threatened employees with termination if they brought further grievances to her attention.

Employee witnesses Mary Jo Downey, Carrie Price, and Russell Sisler gave testimony in support of the allegation. Downey testified that employee dissatisfaction with a changed pay scale and with men working the accounts of telephone sales representatives had caused employees to voice numerous complaints to Romines prior to September 1978. At a meeting held on what Downey recalls to have been September 18 or 19, she indicated Romines informed the telephone sales representatives that she was tired of hearing all the complaints and if anyone had any further complaints they could just hand in their resignation. Price testified that Romines, during the meeting under discussion, stated she was tired of hearing complaints about the new pay system and she was not going to listen to any more complaints or gripes and if employees had any more to write out their resignations before they came to her with them. Sisler merely recalled that Romines stated at the meeting that they were to stop complaining and, if they did not, they were to turn in their resignations before they did any more complaining.

Romines was called by Respondent as a witness. At the outset of her testimony she indicated she now works for Dunn and Bradstreet rather than Respondent. Romines indicated during her testimony that she held a meeting with all the telephone sales representatives except Edith Brand and Barbara Culbreath on September 20 because her supervisors, Green and Bray, had complained to her that the Tampa facility was not meeting its sales objectives and the telephone sales representatives were spending too much time at nonselling activities such as breaks and extended lunch hours. Through Romines, Respondent placed in evidence as its Exhibit 1(a) a one-page document which indicates that the topics discussed were:

> 1. Work day is from 8:00 AM to 5:00 PM with one hour for lunch and two fifteen minute breaks each day.
>
> 2. We have sales objectives to meet and deadlines for getting revenue closed.
>
> 3. The salespeople have the potential to earn $15,000 plus but you don't achieve this by taking long breaks, lunch hours, and sitting around complaining and talking negative all the time. Ask yourself what you can do for the company and not what the company can do for you. This company has offered you good hours, good working conditions, good pay and where else in Tampa can you go and make this kind of money—you've got it easy.

[2] The commission on some types of sales was increased and on other types decreased. Commission on repeat sales was placed on a deferred basis; i.e., until the directory was closed.

[3] See G.C. Exhs. 3(a)-(k) and 4.

[4] See G.C. Exh. 1(e). In its answer, Respondent indicates "Buddy" Smith is its midwestern territory manager.

4. Florida has one of the lowest % of increase to the advertiser less rate than any other division in the company.

5. I intend to have the telephone sales dept. in Florida meet their objective and if anyone feels that they cannot meet these standards they are to turn in their resignations.

6. That the company is looking into the pay plan and in no way was it intended for anyone's pay to be cut.

7. If we are all in agreement, then let's work together and see this dept. be #1 in the company.

With specific regard to inviting those attending the meeting to hand in their resignations, Romines admitted she told the employees she had "had it up to here" with gripes about the pay plan and commented that if they were unhappy with the pay plan and did not feel they could meet their sales objectives to hand in their resignations.

While the General Counsel's witnesses appeared to be attempting to recite their best recollection of one single comment made by Romines during the September 20 meeting, none of them sought when testifying to describe all they could recall having been said at the meeting. Romines described the meeting in considerable detail and repeatedly contended that she invited employees to hand in their resignations if they intended to engage in unproductive activities rather than sales connected activities. I credit her assertion that her resignation comment was made in the context she described and conclude that the General Counsel has failed to prove that she threatened to discharge any employee who sought thereafter to complain about the new pay plan.

2. Alleged threat to close office

Paragraphs 6(a) and (7) of the complaint allege that on October 24, 1978, and on a date in November 1978 Respondent threatened employees by informing them that if the office went union it would be closed down.

The General Counsel sought to prove the allegations described through the testimony of employees Downey, Edith Brand, and Barbara Culbreath. Downey testified that on October 24 William Tripp held a meeting which she attended together with Brand and employee Virginia Smith. Respondent official William Green was present at the meeting, but Tripp did the talking. According to Downey, Tripp put a diagram on the blackboard during the meeting indicating the alternatives in case the employees selected the Union. Downey testified that two of the alternatives listed were: (1) There could be a strike and (2) the office could close. Downey indicated Tripp orally stated that if there was any harassment on the part of any employees, disciplinary measures would be taken. On direct examination, Brand acknowledged that she attended the October 24 meeting conducted by Tripp during which Tripp had a chart on the blackboard showing them what could happen if the Union got in. The alternatives she recalled were "that we could go on strike, the Tampa office could be closed, and so forth, or moved . . . ." Brand admitted her recollection of the meeting was not very good, and she testified she was not sure whether the alternative of the office being closed was on the chart or not. Culbreath testified that she recalled a meeting held by Tripp in September. She could not recall whether all telephone sales representatives attended one meeting or whether two meetings were held. She testified Tripp had a diagram on the board showing the different ways "we" could go if the union came in, and she testified ". . . one of the alternatives that was on this diagram on the board was that it could close down all together, and be changed to a different area."

When he appeared as a witness, Tripp testified he met with three groups of employees on October 24, the day after the hearing in the representation case, to explain to employees what could happen from that point forth. He produced a page from a yellow legal pad which was placed in evidence as Respondent's Exhibit 3, indicating it contained the diagram he had placed on the blackboard before the three meetings. Tripp testified that following the diagram he informed each group that a hearing had been held because the Company wanted premise sales personnel in the unit while the Union did not; that both sides would file briefs; that the Company would begin its campaign; that the Union might withdraw; that before the election the Company would be required to give the Union an *Excelsior* list—a list of the employees' names and addresses; that if the company won the election there would be fun; if the Union won the Company would bargain in good faith; that bargaining could lead to settlement or a strike; that the Union could legally strike over economics; and that the Company could permanently replace economic strikers. Tripp stated that the diagram placed on the board did not contain any alternative involving closing or moving the office. He testified, however, that at the first and perhaps the second meeting, but not the third, employees asked if the office would be closed if the Union won the election. He testified his response was:

> There are no present plans to close this office. We would never close the office because of union activity. We never have. The only reason we would close the office would be on the basis of economics.

Employees Betty Parr and Virginia Smith were called as witnesses by Respondent and each described the October 24 meeting she attended. Both indicated the diagram placed on the board contained nothing concerning closing or moving the office. Parr indicated some employee in her group asked if the office could be closed. She stated Tripp's reply was "We cannot close an office because of union activities," and she stated she believed he said only for economic reasons.

I credit Tripp's denial that he indicated during the October 24 meetings that the Company would close the Tampa office if the Union won the election. Tripp, Parr, and Smith were impressive witnesses while Brand and Culbreath admitted that their recollection of what occurred at the meetings they attended was poor. Downey was an impressive witness, but I am convinced the diagram placed on the blackboard by Tripp contained no reference to closing the Tampa office.

As no evidence was offered to prove the assertion that a similar threat was made by Respondent in November 1978, I recommend that paragraphs 6(a) and (7) of the complaint be dismissed.

### 3. Respondent's purchase of meals

Paragraph 12 of the complaint alleges that from October 23, 1978, forward Tripp, Green, Sturtz, and Burgess purchased meals for employees to discourage them from engaging in union activities.

The record does, in fact, reveal that Respondent officials named above took many, if not all, of Respondent's telephone sales representatives to breakfast, lunch, and/or dinner during the election campaign.

Elsewhere in the complaint, the General Counsel alleges that the above-named Respondent agents and/or supervisors engaged in specific violations of Section 8(a)(1) while entertaining employees and members of their families or friends at breakfasts, luncheons, or dinners. Consequently, I interpret the allegation to be one wherein the mere purchase of meals is alleged to constitute a violation. I find such contention to be without merit. In *Fashion Fair, Inc., et al.*, 157 NLRB 1645, 1646 (1966), the Board held that campaign parties, absent special circumstances, are legitimate campaign devices. The same rule applies to cocktail parties and dinners. *Northern States Beef, Inc.*, 226 NLRB 365, 367 (1976); and *Delchamps, Inc.*, 244 NLRB 366 (1979).[5] I recommend that paragraph 12 of the complaint be dismissed.

### 4. The alleged threat of discharge on November 7

Paragraph 8 of the complaint alleges that Sturtz threatened employees with possible termination for engaging in union activities on November 7, 1978.

The General Counsel relies upon the testimony of employee Russell Sisler to establish the violation.

The record reveals that Sturtz became Respondent's division manager for the State of Florida on October 30, 1978. Shortly thereafter, he held individual orientation interviews with the telephone sales representatives to become acquainted with them, explain his goals, and urge them to work with him so the goals could be achieved. Sisler was asked what Sturtz said to him during his individual interview and he described a conversation in which Sturtz observed that employees were not pulling together and he (Sturtz) wanted them to become organized and get things going the right way. Thereafter, without actually making an attempt to exhaust Sisler's recollection of the conversation, the General Counsel handed him his pre-trial statement and caused him to read a portion of it. Sisler then testified he had asked Sturtz during the conversation what would happen to the people that had been there so long if the Union were to lose the election. Sisler claimed Sturtz' reply was, "Well, if they conform to the company's standpoint, of course, there wouldn't be any problem, but if they continued to see things their way"—so to speak—"that he would have to get rid of them."

Sturtz testified that he asked Sisler during the interview in question what was on his mind and Sisler replied that his biggest worry was that if the Union was voted in that people that had signed with the Union would be terminated. Sturtz claims his reply was that he was being silly because the Company could not and would not fire them for that reason and further stated that "The only way you can get fired in this company since we are a sales organization, is not to produce . . . . The telephone companies hire us to produce—to sell advertising, we have quotas to meet . . . . The only people that get fired from this company are the people who consistently do not meet their quota objectives, because if we do not meet the objectives we would no longer have a company." Sturtz indicated that several other employees asked similar questions when he interviewed them and his reply was the same in those instances.

I credit Sturtz' account of the conversation in question as he was the more impressive witness. I recommend dismissal of paragraph 8 of the complaint.

### 5. Promise of promotion

Paragraph 6(c) of the complaint alleges that Tripp impliedly promised employees promotion on November 18, 1978, to discourage them from engaging in union activities.

The General Counsel sought to prove the allegation through the testimony of employee Sisler who testified that in mid-November Tripp took him, his mother, and his girl friend to dinner at Bern's Steak House, a restaurant of his choosing, and that Tripp observed during dinner that he had progressed while with the Company and he (Tripp) felt he had the potential to move up to a management position. The employee testified that Tripp further indicated that he would have to move to progress, and that Louisiana would be the best division for him at the time.

In view of the fact that the Union and the approaching election were not mentioned during the above-described conversation, it appears the General Counsel is urging me to find the conversation in question was violative merely because an employee's promotion potential was discussed with him by a member of management during an election campaign. I find no merit in the contention and recommend that paragraph 6(c) of the complaint be dismissed.

### 6. Threat of unspecified reprisals allegedly made by Burgess

Paragraph 10(b) of the complaint alleges that Harriet Burgess threatened employees with unspecified reprisals if they supported the Union on December 3, 1978.

The General Counsel sought to prove the allegation through the testimony of employee Edith Brand.

The record reveals that Brand met Respondent's vice president, Buddy Smith, Burgess, and another individual at a Tampa airport motel on December 3 and the party thereafter had dinner at a yacht club and drinks at a bar. Brand testified that, after the group had finished dinner, Smith took her out by the pool and asked what the problems were that "this" should have come about. She

[5] See also *Lloyd A. Fry Roofing Company*, 123 NLRB 86, 87-89 (1959); and *The Zeller Corporation*, 115 NLRB 762, 764-765 (1956).

claims she replied that it was mostly money, and he stated things could be straightened out; "you've got us down here to talk to you." Brand indicated the group then went to a bar called Joe Murphy's and that Burgess, after a few more drinks, got quite into it about the Union and said if the Union did not get in their pay would be changed by March, but that was off the record. Brand testified that, to emphasize her comment, Burgess said, "Don't you think I can do it?" When Brand said she did not know, Burgess further exclaimed, "Well, believe me, I can do it."

When she appeared as a witness, Burgess was not asked if she made the specific remarks attributed to her at Murphy's bar by Brand. Instead, she testified she recalled that Brand had made some comment about pay while they were in the bar and claimed she replied, "Edith I don't understand why everybody is so concerned about the pay. You have been with us . . . Edith, you've gone through it, and you know for a fact, that whenever we make a change maybe there are things that have to be ironed out, but believe me, they have always been corrected within a year." Burgess then explained that she had no authority to change a pay system, that Respondent's marketing department makes recommendations, and that final decisions are made only after approval of the executive vice president of operations (Ray Eshelman), the chairman of the Board (Mr. Craig), and Mr. John Berry.

When Brand described the occurrences of December 3 it appeared to me that she was honestly attempting to state her best recollection of what had transpired. Smith was not called as a witness during the hearing. His poolside comments are discussed, *infra*. While Burgess inferentially denied making the comments attributed to her by Brand, the employee appeared to be very certain when she described the barroom events. I credit Brand's version of the incident. Accordingly, I find that Respondent, through the December 3, 1978, comments made by Burgess, promised to change the pay plan applicable to telephone sales representatives if they voted against the Union.[6]

### 7. Alleged December 6 threats

Paragraphs 9 and 10(a) of the complaint allege that William Green and Burgess, respectively, threatened employees on December 6, 1978, by telling them Respondent would go to any length to ensure a union loss.

The General Counsel failed to offer any testimony to prove that Green threatened any employee(s) as alleged in paragraph 9 of the complaint. I recommend that the allegation be dismissed. The alleged threat made by Burgess was described by employee Carrie Price. She testified that she went to lunch with Smith and Burgess on December 6 at a Spanish restaurant in the Ybor City section of Tampa. Price testified that during the luncheon Burgess asked what some of the problems were and asked how they could be resolved. At one point, Price claims Burgess stated she would do anything and everything she had to do to keep the Union out. Price claims she reacted by stating she felt that it was really too late; that things had gone too far to try to solve anything.

Burgess did not expressly deny that she had asked Price what the problems were and how they could be resolved at the luncheon in question. Her version of the conversation was that Smith discussed his experiences with the Company at some length; that Price discussed some of her problems such as "charge backs"; and that she (Burgess) commented at some point that the Company did so much for its people that she could not understand what the employees wanted, hoped to gain, or needed to gain. Burgess specifically denied that she made any remarks to Price concerning the lengths she or the Company would go to defeat the Union.

I credit Price's version of the December 6 luncheon conversation as she was the more impressive witness. Accordingly, I find, as alleged, that Respondent violated Section 8(a)(1) of the Act on December 6, 1978, as Burgess then threatened employees by stating she would do anything and everything she had to do to keep the Union out.

### 8. Sisler's refusal to talk to Respondent official Eschelman

Paragraph 6(b) of the complaint alleges that Tripp threatened employees with unspecified reprisals for refusing to talk to representatives of Respondent about the Union on December 7, 1978.

The record reveals that employee Sisler played tennis with Tripp and others during the evening of December 7. At the conclusion of the game, Tripp told Sisler he would like for him to meet with Eshelman, Respondent's executive vice president of operations, who was interested in talking to him about his future with the Company. Sisler declined and Tripp stated, "It's your future, kid."

Patently, the evidence offered to prove the violation alleged is insufficient to accomplish that objective. I recommend dismissal of paragraph 6(b) of the complaint.

### 9. Solicitation of grievances

Paragraph 11(a) of the complaint alleges that from September 22, 1978, forward Sturtz, Burgess, Tripp, Green, and Smith solicited employee grievances and impliedly promised to correct grievances of employees to discourage their union activities.

Paragraph 11(b) of the complaint alleges that Respondent resolved grievances submitted by employees pursuant to the acts and conduct described in paragraph 11(a) by (1) changing employees' supervisors, (2) taking steps to correct employees' account problems, (3) promising to look into a new pay schedule which had reduced the pay of employees, and (4) by generally recognizing that problems existed and changes needed to be made in order to discourage the union activities of its employees.

The General Counsel's specific contentions and the record evidence revealing the pertinent acts and conduct of the named Respondent officials is set forth below.

[6] Since Burgess did not indicate what action, if any, would be taken regarding the pay plan if the employees voted in favor of union representation, I refrain from finding she impliedly threatened "unspecified reprisals" if employees supported the Union.

a. *The Facts*

(1) Tom Sturtz

The General Counsel contends that Sturtz solicited and impliedly or actually resolved grievances on October 4 and November 30, 1978.

As indicated, *supra*, Sturtz individually interviewed each of the telephone sales representatives upon becoming division manager at the end of October 1978. The record reveals such interviews were conducted on November 10 and 20. Employees Downey and Sisler described their individual interviews, and employee Brand testified that Sturtz participated in the settlement of a grievance she had voiced to Burgess in mid-October.

Downey testified that she was called to Sturtz' office on November 20. Downey's testimony, which was brief, was:

> Q. What did he say to you?
>
> A. He said that he recognized that we had problems in the Florida division, and that we were under new management, and that things were going to change, and that he wanted to get things straightened out, and that if we all started—I believe he used the example of a rowing team—if we all rowed together that we'd do much better.
>
> Q. Did he say anything else?
>
> A. Well, he said that, of course, with management—new management—with Miss Romines and Mr. Bray being gone, that—that he felt one of the basic problems was organization, and getting back on schedules, and that he would do what he could to see that we would get back on schedule.

Sisler was interviewed in early November as previously indicated. The pertinent portion of his testimony, which was also brief, is:

> Q. Okay. And do you remember what, if anything, was the subject of the conversation?
>
> A. Well, he was talking more or less about getting the unit back into one organized thing—you know—moving all together instead of pulling apart like he felt we were at the time, and basically—you know—
>
> Q. What specifically do you recall him saying?
>
> A. Well, he was—he told me that we had been rowing against each other, so to speak, like people on the opposite side of a boat, we were going in a big circle, and basically we just weren't getting anywhere that way, and that—you know—that was the reason that they had made changes as such, was because of the fact that—you know—we weren't getting anywhere the way we were, so they made changes in order to try and get us to move up—you know—and get things going back the right way.

Brand indicated during her testimony that she complained to Burgess in mid-October that several of her accounts had been taken over by premise salesmen thereby causing her a loss of commission. Burgess discussed the matter with Sturtz, and Brand was subsequently called into Sturtz' office where she was informed that the two Tallahassee accounts would be replaced by two accounts in the Fort Walton area.

Sturtz testified that in each of the individual interviews he was basically trying to tell the employees he was meeting with them to learn of any problems they had, he was attempting to let them know more about himself and acquaint them with his goals so they could mutually work for the achievement of their goals. Respondent introduced as an exhibit an outline Sturtz said he followed when conducting the individual meetings. It is in the record as Respondent's Exhibit 7 and provides:

> I WANT TO GET TO KNOW YOU INDIVIDUALLY
>
> I WANT YOUR INPUTS
>
> —LIKES
> —DISLIKES
> —SUGGESTIONS
>
> I CAN'T DO ANYTHING TO IMPROVE UNTIL I KNOW YOUR PROBLEMS
>
> OPEN LINES OF COMMUNICATION
>
> OPEN DOOR POLICY

(2) Harriet Burgess

The General Counsel contends Burgess solicited and impliedly or actually resolved employee grievances on October 9, 23, and 30, 1978. He sought to prove the allegations through employee witnesses Downey, Price, and Cuesta.

Downey testified that on November 2 Burgess took her, Brand, and Smith to breakfast in a private room at a Tampa airport motel. She indicated that during the breakfast Burgess took out a pad and pencil and went around the room asking each of the employees what she could do to get rid of the problem. Smith and Downey mentioned specific account problems and Burgess allegedly promised to check them out and find out how to correct them. Downey testified that Burgess explained during the meeting that Ed Bray, their previous division manager, had been offered a transfer but had declined it and decided to retire. Burgess also informed the employees that Martha Romines, the Tampa telephone sales representative manager, would be leaving to go to Fort Meyers as a premise sales representative. At some point in the meeting, Downey claims Burgess asked each of the employees if they had any difficulty on prizes. Downey indicated she discussed the specific account problem she had brought to Burgess' attention during the meeting with her after the breakfast meeting and they mutually decided it was insignificant and Downey decided to drop it.

Price testified that, when Burgess first appeared at the Tampa facility in late October 1978, she met with telephone sales representatives in their conference room and, after greeting employees individually, announced to the group that she had been sent down from Dayton "to straighten out our situation, and that she had her credit cards and was here to wine and dine us . . . ." Price claims Burgess then stated the employees were to let her

know if they would like to go out with her and when. The second occasion described by Price was a luncheon meeting which she attended in the Ybor City section of Tampa with Burgess and Buddy Smith on the Wednesday preceding the December 8 election. Price testified that during the luncheon Burgess asked her what some of the problems were and how they could be solved. Price replied she felt it was already too late and things had gone too far to try to solve anything. She claims Burgess stated, at some point, "I will do anything and everything to keep the Union out." On the day of the election, Price and Burgess once again went to lunch. During lunch, Price claims Burgess asked her what it was that they all wanted from them, and Price replied they just wanted to be treated fairly and did not want the men (premise salesmen) taking accounts from them.

While Price claimed the Burgess "wine and dine" remark was made in a conference room, employee Cuesta testified that Burgess approached her work station the first day she was in the office and stated in the presence of Virginia Smith, Rusty Sisler, and herself that she was there to find out exactly what had happened and she was there to wine and dine them. Cuesta, who admitted she could not recall the incident clearly, also claimed Burgess stated at the time that they did not need a union; stated Respondent was a good Company; and asked why they had decided they needed a union.[7]

Burgess indicated during her testimony that on the morning of October 23, she went directly to the conference room at the Tampa office as Romines had scheduled a training meeting for 8 a.m. As Burgess was greeting employees, she claims some unnamed employee asked, "Well what are you doing here this time, have you come to wine and dine us like the union said you would?"[8] She stated she took it as a joke and replied, "Well I don't have any money but I've got plenty of credit cards," and then informed the employees that she was there basically to work with Martha Ann (Romines).

(3) William Tripp

The General Counsel contends that Tripp solicited and impliedly promised to resolve or actually resolved employees' grievances on October 23 and 30 and December 7, 1978. Employee Price was the only witness who claimed that Tripp solicited employee grievances during the election campaign. Her uncontested testimony reveals that Tripp took her, Culbreath, Sisler, Williams, and Frank Corrado to breakfast around the end of October or the beginning of November and asked them during breakfast what their problems were—why they had taken the steps they had taken. Tripp acknowledged that he discussed employee grievances and complaints with employees during the election campaign, but claimed that most complaints concerned pay problems. He testified that he discusses grievances and complaints with employees almost every day as part of his job and his discussions are conducted pursuant to Respondent's policy which is formalized in its personnel manual.[9]

(4) William Green

The General Counsel contends that Green solicited and impliedly promised to resolve or actually resolved grievances of employees on November 30, 1978.

Employee Downey indicated during her testimony that at a meeting held prior to December 6 Green stated that he wished that the Company could have another chance to rectify whatever wrongs that had transpired. She claims she told Green, as she left the meeting, she thought his comment was one of the most sensible things the Company had done and he suggested they should discuss the matter further. Thereafter, on December 6, Downey remained in the conference room after another meeting had been held and talked to Green. On that occasion, she testified he told her a union in Mr. Berry's Company was inconceivable, that this (union matter) could go on and on, that there would be objections, charges would probably be filed, there would be appeals, and there would just be a lingering problem that would go on and on.

When Green testified, he did not refute Downey's above-described testimony. He candidly admitted that he, Tripp, Burgess, Sturtz, and Eshelman talked to employees about their problems during the election campaign period, indicating that most of his discussions concerned the new pay plan.

(5) "Buddy" Smith

The General Counsel contends that Smith solicited and impliedly promised to resolve or actually resolved employees' grievances on December 3, 1978.

Employee Brand indicated during her testimony that when Burgess and Smith took her to dinner at the yacht club on December 3, Smith asked her "what the problems were," and when she responded "mostly money," he stated: "You know, things can be straightened out." During the same conversation, she claims Smith commented, "Well, you've got us down here to listen to you." "Buddy" Smith was not called by Respondent to rebut Brand's testimony.

b. *Analysis*

The Board has held that, in the absence of an established program, the holding of meetings during a union campaign at which employees are encouraged to air their grievances or problems constitutes solicitation of those grievances and an implied promise of corrective action if employees will reject the union, thus violating Section 8(a)(1) of the Act. *Shulman's Inc. of Norfolk*, 208 NLRB 772 (1974), reversed on other grounds 519 F.2d 498 (4th Cir. 1975); *York Div., Borg-Warner Corporation*, 229 NLRB 1149, 1152–53 (1977). Moreover, even though an established practice of soliciting grievances is shown, the

[7] I do not credit this portion of Cuesta's testimony as she admitted her recollection was poor, she erroneously recalled the conversation occurred in her work area rather than in the conference room, and her testimony was not corroborated by Price, Smith, or Sisler when they testified.

[8] On cross-examination, Burgess testified the unnamed employee may have been Sandy Williams because the comment was the type of thing Sandy would say. Williams was not produced as a witness. I credit Price's version of the conversation.

[9] Excerpts from such manual concerning communication with employees were placed in the record as Resp. Exhs. 4 and 5.

Board will find that grievance solicitation is unlawful in a union campaign situation if high-ranking company officials who would not otherwise be soliciting employee grievances engage in such activity. *The Stride Rite Corporation*, 228 NLRB 224, 224–225 (1977).

Applying the foregoing to the facts summarized above, I conclude that Sturtz' interview of employees Downey, Sisler, and Brand presents a situation wherein a local management official engaged in solicitation pursuant to an established practice. Sturtz has managed numerous Respondent facilities, and he claims he has followed essentially the same pattern each time he was placed in charge of a new group of employees. It is readily apparent that his major objectives, when conducting individual interviews, were to introduce himself, become acquainted with the employees individually, and urge them to cooperate with him to permit their mutual accomplishment of the tasks they were expected to accomplish. I find that Respondent did not, through Sturtz' conduct during the individual interviews, violate the Act as alleged.

With respect to Brand's complaint—that premise salesmen had wrongfully taken over two of her accounts—I note the record fails to reveal that Burgess or Sturtz solicited that complaint. To the contrary, Brand indicated she complained to Burgess about the matter. The violation alleged occurs when a complaint is solicited, under circumstances wherein it is promised or can be inferred that the employer will receive the complaint with an intention of resolving it if possible. That situation is not presented by the Brand complaint, and I find that Sturtz did not engage in unlawful conduct when he resolved the complaint.

As Burgess is a high-ranking Respondent official and she pointedly indicated she was engaging in solicitation activities at the early November breakfast meeting and at the two luncheon meetings held with employee Price to keep the Union out, I find that Respondent violated Section 8(a)(1) as alleged through her actions on the occasions described. Although the General Counsel alleged that Respondent violated Section 8(a)(1) by forcing Bray to retire and by transferring Romines, I note that Burgess merely informed employees Downey, Brand, and Smith at their breakfast meeting that Bray had been asked to transfer but had opted to retire and she merely indicated that Romines was being transferred without indicating that either action was taken to resolve employee complaints. Accordingly, I find that the General Counsel has failed to prove that Respondent caused Bray to retire or transferred Romines in such a manner to violate Section 8(a)(1) as alleged.

It is undisputed that Tripp, Green, and Smith are high-ranking Respondent officials who were sent to Tampa to participate in the Company's election campaign. Without controverting the employee testimony described above, Respondent contends I should not find that the solicitation engaged in by these officials violated the Act as they were engaged in such activities pursuant to published company policy.[10] In addition, with regard to Tripp's grievance solicitation activities, Respondent claims he regularly solicits employee grievances in the performance of his personnel functions and the existence of an election campaign should not prevent him from performing his normal duties. I find such contentions to be without merit as the record clearly reveals that each of Respondent officials named indicated when soliciting employee grievances that the purpose of the solicitation was to ascertain why the employees sought union representation or they indicated clearly that they wanted to remedy employee complaints to keep the Union out. I find, as alleged, that through Tripp's late October or early November breakfast conduct, Green's conduct during the employee meeting and private meeting described by employee Downey, and Smith's poolside conversation with employee Brand, that Respondent solicited employee grievances in circumstances wherein the solicitor impliedly or expressly indicated such grievances would be favorably received to encourage employees to withdraw their support from the Union. Such conduct violates Section 8(a)(1) of the Act.

A further grievance related contention remaining for discussion is the General Counsel's assertion that Respondent violated Section 8(a)(1) and (3) of the Act by resolving grievances of employees by changing employees' supervisors, taking steps to correct employees' account problems, promising to look into the new pay schedule, and "by generally recognizing that problems existed and changes needed to be made."[11]

The only evidence offered to prove the supervisory change allegation is that evidence which reveals that Burgess informed employees that Bray chose to retire rather than transfer and that Romines was being transferred to a premise sales position. As indicated, *supra*, I conclude that such evidence is insufficient to establish the violation alleged.

The record reveals that two employee grievances were resolved: Brand was given two accounts by Sturtz to replace two of her accounts taken by premise salesmen; and Burgess discussed an account complaint voiced by Downey at the motel breakfast meeting with the employee and they mutually decided the complaint was insignificant and no remedial action was required. As indicated, *supra*, I find that Burgess and Sturtz did not engage in unlawful conduct when they resolved Brand's grievance which was not unlawfully solicited. As I have found that Burgess unlawfully solicited employee grievances at the breakfast meeting attended by Downey, it naturally follows that Burgess engaged in further conduct violative of Section 8(a)(1) when she subsequently sought to remedy the account grievance aired by Downey at the meeting, and I so find.

Presumably, the General Counsel relies upon Brand's testimony concerning the Murphy bar incident to establish the unlawful promise to look into the new pay schedule. I have found, *supra*, that Respondent violated the Act through Burgess' comments made during the bar conversation.

[10] See Resp. Exhs. 4 and 5.

[11] See par. 1(b), G.C. Exh. 1(c).

Having specifically found that various Respondent officials solicited employee grievances in an unlawful manner, I see no need to discuss the General Counsel's general contention that Respondent violated Section 8(a)(1) and (3) by "generally recognizing that problems existed and changes needed to be made in order to discourage the union activities of its employees."

### 10. The alleged wage increase

Paragraph 13 of the complaint alleges that Respondent gave its employees a wage increase on December 8, 1978, to discourage them from voting for the Union, and that it withdrew the wage increase on December 11, 1978, because employees had selected the Union as their bargaining representative.

The record reveals that Respondent maintains its pay records for all employees at its Dayton, Ohio, headquarters where pay-related information is processed with the aid of a computer. At Christmastime in 1977, the computer malfunctioned and the Tampa telephone sales representatives received checks for less than the amounts that were actually due them. Some 5 days before the last pay before Christmas in 1978, the computer malfunctioned once again. Burgess testified that, when she learned the computer was inoperable, she calculated the commissions due to Tampa personnel manually and transmitted such information to the Dayton office. Thereafter, Dayton personnel added the figures supplied by Burgess to figures which had been entered in the computer before it malfunctioned, and when the employees' checks arrived in Tampa on the morning of December 8, 1978, all employees were overpaid by amounts which varied from approximately $300 to $600. Although several employees informed Burgess prior to the afternoon election on December 8 that they had been overpaid, the reason for the overpayment was not explained to them until Monday, December 11, when Burgess contacted Dayton and learned what had happened. The telephone sales employees were permitted to keep the moneys they were paid on December 8, but were informed that the overpayment would be deducted from their next two paychecks. The record reveals that computer breakdown resulted in issuance of paychecks through a local bank on an occasion shortly before the hearing of the instant case.

It is clear, and I find, that Respondent's telephone sales employees were overpaid due to honest error on December 8, 1978. While they were required to repay the amount they were overpaid during the next two subsequent pay periods, the record fails to reveal that any employee was informed that repayment was required because the employees had selected the Union as their bargaining representative. In the circumstances described, I find that the General Counsel has failed to prove that employees were given a raise to discourage them from voting for the Union and he has failed to prove that a raise was taken away from them because they selected the Union as their bargaining representative. I recommend that paragraph 13 of the complaint be dismissed.

### 11. Exclusion of telephone sales representatives from Christmas party

Paragraph 14 of the complaint alleges that Respondent refused to invite Tampa telephone sales representatives to a 1978 Christmas party at which gifts were distributed to employees in retaliation for their support of the Union.[12]

While Respondent official Tripp testified Respondent has no definite policy regarding Christmas parties, employee Brand testified, without contradiction, that a Christmas party attended by telephone sales representatives and other employees had, prior to 1978, been held at the Tampa office during each of the 14 years she has been employed at that location. Burgess indicated that she and Sturtz decided in December 1978 that the clerical and art employees in the Tampa office deserved a Christmas party. Sturtz testified that he wanted to give a party for this particular group of employees as a gesture of thanks for their patience in tolerating the turmoil and disruption in the office caused by the union election campaign. It is undisputed that the telephone sales representatives were not invited to the party and that those attending were given inexpensive gifts; i.e., females were given small pins called tie tacs which had a yellow page emblem on them and males were given ties which had a yellow page emblem on them. The record reveals that Respondent's vice president, Eshelman, provided the gifts, which were valued at $2 to $6, indicating he desired that they be given to the art and clerical employees as a remembrance of his experiences with them. After the original charge was filed in the instant case, the telephone sales representatives were given tie tacs and ties like those previously given to other employees. The record reveals Respondent had not engaged in a practice of giving employee Christmas gifts prior to 1978. Romines and employee Williams testified customers were hard to reach during the Christmas period and employee disinterest in Christmas parties or luncheons was shown in the past as many telephone sales representatives took vacations during the Christmas holidays.

Respondent contends the absence of evidence which would show that telephone sales employees were not invited to the 1978 Christmas party because they selected the Union as their bargaining representative precludes a finding of violation. I find no merit in such contention. The instant record reveals that Respondent, through its high-ranking officials, including Eshelman, who directed that gifts be given to only clerical and art employees at Christmas, vigorously opposed the Union during the election campaign conveying the impression that they were willing to accommodate telephone sales employees by eliminating sources of dissatisfaction which had caused them to seek union representation in the first instance. Patently, the decision to exclude them from a Christmas function which they had been invited to attend during the 14 preceding years several weeks after they elected the Union as their bargaining representative reveals a marked change in attitude on the part of Respondent's officials. In the circumstances, I am com-

[12] The party was actually a luncheon.

pelled to infer that Respondent's management officials decided to exclude telephone sales representatives from participation in the Christmas function under discussion and to refrain from giving them tie tacs and ties which contained the company yellow page emblem because they had supported the Union in the December 8 election. Accordingly, I find that by engaging in such action Respondent violated Section 8(a)(1) of the Act.[13]

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. By engaging in the conduct described in section III, above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent has not engaged in the other unfair labor practices alleged in the complaint, except to the extent herein specifically found.

## THE REMEDY

In order to effectuate the policies of the Act, I find it is necessary, and recommend, that Respondent be ordered to cease and desist from the unfair labor practice found herein, and from interfering with, restraining, or coercing its employees in any like or related manner. I shall ordered that the usual notice be posted.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[14]

The Respondent, L. M. Berry and Company, Tampa, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees by stating it will do anything and everything necessary to discourage their participation in union activities.

(b) Unlawfully soliciting and resolving employee grievances to cause employees to abandon their support for United Food and Commercial Workers International Union, Local 1636, AFL-CIO, or any other labor organization.

(c) Punishing our telephone sales employees by excluding them from participation in Christmas functions because they selected the Union as their exclusive collective-bargaining agent.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is found necessary to effectuate the purpose of the Act:

(a) Post at its Tampa, Florida, facility, copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's authorized representative, shall be posted by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order what steps Respondent has taken to comply herewith.

[13] While the conduct described arguably violated Sec. 8(a)(3) of the Act, I refrain from deciding that issue as an 8(a)(1) remedy will, in my opinion, suffice.

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT threaten employees by stating we will do anything and everything necessary to discourage their participation in union activities.

WE WILL NOT unlawfully solicit and resolve employee grievances to cause employees to abandon their support for United Food and Commercial Workers International Union, Local 1636, AFL-CIO, or any other labor organization.

WE WILL NOT punish our telephone sales employees because they selected the Union as their ex-

clusive bargaining agent by excluding them from participation in Christmas functions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed under Section 7 of the Act.

L. M. BERRY AND COMPANY